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7

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA

10  
11 JOSCELIN B. THOMAS,

12 Plaintiff,

13 vs.

14 PROGRESSIVE FINANCIAL  
SERVICES, INC.,

15 Defendant.  
16

CASE NO. 5-12-cv-01337-DSF-OP

ANSWER TO COMPLAINT

17 **ANSWER TO COMPLAINT**

18 Defendant PROGRESSIVE FINANCIAL SERVICES, INC. (hereinafter  
19 "Defendant") hereby answers the Complaint of Plaintiff JOSCELIN B. THOMAS  
20 ("Plaintiff") as follows:  
21

22 **PRELIMINARY STATEMENT**

23 1. Defendant admits that Plaintiff has brought an action asserting a claim for  
24 damages under the Fair Credit Reporting Act ("FCRA") 15 U.S.C. §§ 1681, *et seq.*,  
25 however; Defendant denies any violation of the FCRA or wrongdoing whatsoever.  
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**JURISDICTION**

2. Defendant admits that this Court has jurisdiction over Plaintiff's federal law claims. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 2 of Plaintiff's Complaint.

3. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 3 of Plaintiff's Complaint, and therefore, denies the same at the present time.

**VENUE**

4. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 4 of Plaintiff's Complaint, and therefore, denies the same at the present time.

5. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 5 of Plaintiff's Complaint, and therefore, denies the same at the present time.

**PARTIES**

6. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 6 of Plaintiff's Complaint, and therefore, denies the same at the present time.

7. Defendant admits that it has an office at 1919 W. Fairmont Dr., Building 8, Tempe, Arizona 85282. Except as specifically admitted herein, Defendant denies the allegations contained in Paragraph 7 of Plaintiff's Complaint.

**FACTUAL ALLEGATION**

8. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 8 of Plaintiff's Complaint, and therefore, denies the same at the present time.

9. Defendant lacks sufficient knowledge to admit or deny the allegations contained in Paragraph 9 of Plaintiff's Complaint, and therefore, denies the same at the present time.



1           15. Defendant asserts that the allegations in Paragraph 15 of Plaintiff's  
2 Complaint makes no affirmative allegations against Defendant, and therefore; no  
3 response from Defendant is required. To the extent that a response is required,  
4 Defendant lacks sufficient knowledge to admit or deny the allegations contained  
5 therein, and therefore; Defendant denies the same at the present time. Defendant also  
6 asserts that the FCRA speaks for itself.

7           16. Defendant asserts that the allegations in Paragraph 16 of Plaintiff's  
8 Complaint makes no affirmative allegations against Defendant, and therefore; no  
9 response from Defendant is required. To the extent that a response is required,  
10 Defendant lacks sufficient knowledge to admit or deny the allegations contained  
11 therein, and therefore; Defendant denies the same at the present time.

12           17. Defendant responds to the allegations in Paragraph 17, including subparts  
13 "A" through "O", as follows:

14           A. Defendant lacks sufficient knowledge to admit or deny the  
15 allegations contained in Paragraph 17, subpart "A" of Plaintiff's  
16 Complaint, and therefore, denies the same at the present time.

17           B. Defendant admits that it had a permissible purpose under the FCRA  
18 in obtaining Plaintiff's credit information from Experian. Except as  
19 specifically admitted herein, Defendant denies the allegations contained  
20 in Paragraph 17, subpart "B" of Plaintiff's Complaint.

21           C. Defendant admits the allegations contained in Paragraph 17,  
22 subpart "C" of Plaintiff's Complaint. Defendant also admits that it had a  
23 permissible purpose under the FCRA in obtaining Plaintiff's credit  
24 information from Experian.

25           D. Defendant admits the allegations contained in Paragraph 17,  
26 subpart "D" of Plaintiff's Complaint. Defendant also admits that it had  
27 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
28 information from Experian.

1 E. Defendant admits that Plaintiff did not owe a debt to Defendant as  
2 alleged in Paragraph 17, subpart "E" of Plaintiff's Complaint, and  
3 Defendant admits that it attempted to collect a debt owed by Plaintiff to  
4 a third-party .

5 F. Defendant admits that Plaintiff did not owe a debt to Defendant as  
6 alleged in Paragraph 17, subpart "F" of Plaintiff's Complaint, and  
7 Defendant admits that it attempted to collect a debt owed by Plaintiff to  
8 a third-party.

9 G. Defendant admits the allegations contained in Paragraph 17,  
10 subpart "G" of Plaintiff's Complaint. Defendant also admits that it had  
11 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
12 information from Experian.

13 H. Defendant admits the allegations contained in Paragraph 17,  
14 subpart "H" of Plaintiff's Complaint. Defendant also admits that it had  
15 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
16 information from Experian.

17 I. Defendant admits that Plaintiff did not owe a debt to Defendant as  
18 alleged in Paragraph 17, subpart "I" of Plaintiff's Complaint, and  
19 Defendant admits that it attempted to collect a debt owed by Plaintiff to  
20 a third-party.

21 J. Defendant admits the allegations contained in Paragraph 17,  
22 subpart "J" of Plaintiff's Complaint. Defendant also admits that it had a  
23 permissible purpose under the FCRA in obtaining Plaintiff's credit  
24 information from Experian.

25 K. Defendant admits the allegations contained in Paragraph 17,  
26 subpart "K" of Plaintiff's Complaint. Defendant also admits that it had  
27 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
28 information from Experian.

1 L. Defendant admits the allegations contained in Paragraph 17,  
2 subpart "L" of Plaintiff's Complaint. Defendant also admits that it had a  
3 permissible purpose under the FCRA in obtaining Plaintiff's credit  
4 information from Experian.

5 M. Defendant admits the allegations contained in Paragraph 17,  
6 subpart "M" of Plaintiff's Complaint. Defendant also admits that it had  
7 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
8 information from Experian.

9 N. Defendant admits the allegations contained in Paragraph 17,  
10 subpart "N" of Plaintiff's Complaint. Defendant also admits that it had  
11 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
12 information from Experian.

13 O. Defendant admits the allegations contained in Paragraph 17,  
14 subpart "O" of Plaintiff's Complaint. Defendant also admits that it had  
15 a permissible purpose under the FCRA in obtaining Plaintiff's credit  
16 information from Experian.

17 18. Defendant lacks sufficient knowledge to admit or deny the allegations in  
18 Paragraph 18 of Plaintiff's Complaint, and therefore, denies the same at the present  
19 time.

20 19. Defendant admits that it had a permissible purpose under the FCRA in  
21 obtaining Plaintiff's credit information from a credit reporting agency. Except as  
22 specifically admitted herein, Defendant denies the allegations contained in Paragraph  
23 19 of Plaintiff's Complaint.

24 20. Defendant denies the allegations contained in Paragraph 20 of Plaintiff's  
25 Complaint.

26 21. Defendant denies the allegations contained in Paragraph 21 of Plaintiff's  
27 Complaint.

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1 Defendant denies that Plaintiff is entitled to a judgment in her favor, and  
2 Defendant further denies that Plaintiff is entitled to recover any relief whatsoever.

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4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 1. As a separate, affirmative defense, Defendant alleges that Plaintiff's  
7 Complaint fails to state a claim upon which relief can be granted.

8 **SECOND AFFIRMATIVE DEFENSE**

9 2. As a separate, affirmative defense, Defendant alleges that its actions were  
10 proper and did not violate any provisions of 15 U.S.C. § 1681 *et seq.*

11 **THIRD AFFIRMATIVE DEFENSE**

12 3. As a separate, affirmative defense, Defendant alleges that Plaintiff has no  
13 private right of action under the Fair Credit Reporting Act.

14 **FOURTH AFFIRMATIVE DEFENSE**

15 4. As a separate, affirmative defense, Defendant alleges that alleged mental  
16 anguish alone does not support damages under the Fair Credit Reporting Act.

17 **FIFTH AFFIRMATIVE DEFENSE**

18 5. As a separate, affirmative defense, Defendant alleges that at all times  
19 mentioned in the Complaint, Defendant acted lawfully and within its legal rights, with  
20 a good faith belief in the exercise of that right, and in the furtherance of a legitimate  
21 business purpose. Further, Defendant acted in good faith in the honest belief that the  
22 acts, conduct and communications, if any, of Defendant were justified under the  
23 circumstances based on information reasonably available.

24 **SIXTH AFFIRMATIVE DEFENSE**

25 6. As a separate, affirmative defense, Defendant alleges that it did not engage  
26 in any conduct that was intentional, knowing, willful, reckless, malicious, wanton or  
27 outrageous, and that Defendant at all times acted in good faith with respect to its  
28 communications with Plaintiff, if any there were.



**SEVENTH AFFIRMATIVE DEFENSE**

7. As a separate, affirmative defense, Defendant alleges that if it is assumed, *arguendo*, that Defendant violated a statute as alleged in Plaintiff's Complaint, which presupposition Defendant denies, such violation was not negligent nor intentional, and resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

**EIGHTH AFFIRMATIVE DEFENSE**

8. As a separate, affirmative defense, Defendant alleges that it possessed a permissible purposes pursuant to 15 U.S.C. §1681b of the FCRA in obtaining Plaintiff's consumer report from a consumer reporting agency.

**NINTH AFFIRMATIVE DEFENSE**

9. As a separate, affirmative defense, Defendant alleges that a consumer reporting agency may furnish a consumer report to a person "who intends to use the information in connection with a credit transaction involving the consumer on whom the information is being furnished and involving the extension of credit to, or review or collection of an account of the consumer." 15 U.S.C. §1681b(a)(3)(A).

**TENTH AFFIRMATIVE DEFENSE**

10. As a separate, affirmative defense, Defendant alleges that a debt collector has a permissible purpose to obtain a consumer report for the purpose of collecting a consumer's debt.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. As a separate, affirmative defense, Defendant alleges Plaintiff's claims are, or may be, barred because the claimed injuries and damages, if any, were or may have been caused by the conduct of third parties, including, but not limited to, the prior, intervening, or superseding conduct of third parties.

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1 **TWELFTH AFFIRMATIVE DEFENSE**

2 12. As a separate, affirmative defense, Defendant alleges Plaintiff's claims are,  
3 or may be, barred because the claimed injuries and damages were not proximately  
4 caused by any acts or omissions of Defendant.

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

6 13. As a separate, affirmative defense, Defendant alleges, to the extent that  
7 Plaintiff claims to have suffered damages, which is disputed by Defendant, Plaintiff has  
8 failed to mitigate any such claimed damages.

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 14. As a separate, affirmative defense, Defendant alleges that a *pro per*  
11 plaintiff cannot recover attorneys' fees under the Fair Debt Collection Practices Act  
12 and the Fair Credit Reporting Act.

13 **FIFTEENTH AFFIRMATIVE DEFENSE**

14 15. As a separate, affirmative defense, Defendant alleges that it reserves the  
15 right to allege and assert any additional and/or further affirmative defenses as become  
16 apparent to Defendant during the course of this litigation

17 **DEFENDANT'S PRAYER FOR RELIEF**

18 WHEREFORE, Defendant prays that Plaintiff's Complaint be dismissed with  
19 prejudice, for its attorneys' fees and costs incurred herein, and for such further relief  
20 as the Court deems just and equitable.

21 **DEMAND FOR JURY TRIAL**

22 PLEASE TAKE NOTICE that Defendant PROGRESSIVE FINANCIAL  
23 SERVICES, INC. demands a jury trial in this case.

24  
25 DATED: January 10, 2013

CARLSON & MESSER LLP

26 By /s/ J. Grace Felipe  
27 David J. Kaminski  
28 J. Grace Felipe  
Attorneys for Defendant,  
PROGRESSIVE FINANCIAL SERVICES,  
INC.



**SERVICE LIST**

**Thomas, Joscelin B. v. Progressive Financial Services, Inc.**

**File No.: 07366.00**

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